

Letter of Findings: 04-20110614
Sales and Use Tax
For the Years 2008, 2009, and 2010

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ISSUE

I. Sales and Use Tax – Imposition – Interest – Calculation Error.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Taxpayer asserts that the Department erred in calculating statutory interest on the assessment.

STATEMENT OF FACTS

Taxpayer, an out-of state company, has a facility in Indiana. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit for tax years 2008, 2009, and 2010. Pursuant to the audit, the Department determined that Taxpayer did not pay sales tax on certain purchases of tangible personal property, including, but not limited to, office supplies, tools, as well as equipment and supplies for job completions. The Department's audit thus assessed use tax on the grounds that Taxpayer did not pay sales tax or self-assess and remit the use tax on certain purchases of tangible personal property, which Taxpayer used for its business.

Taxpayer timely protested the assessments. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition – Interest – Calculation Error.

DISCUSSION

The Department's audit assessed use tax on certain purchases where Taxpayer did not have documentation showing that it paid sales tax at the time of the purchases or self-assessed and remitted use tax. Taxpayer claimed that the Department's audit made a calculation error in computing statutory interest on the proposed assessment.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

IC § 6-8.1-10-1, in relevant part, provides:

- (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.
- (b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to:
 - (1) the full amount of the unpaid tax due if the person failed to file the return;
 - (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or
 - (3) the amount of the deficiency.

At the administrative hearing, Taxpayer explained that it timely filed a ST-103 form, self-assessing and remitting use tax due for February 2008 tax period ("Tax Period at issue"), in the amount of \$16,107.39. However, during the audit, the Department discovered that the return for the Tax Period at issue was not posted in the Department's computer system, resulting in an overpayment of \$16,107.39. In the process of reconciling Taxpayer's records, the Department's audit assessed Taxpayer additional use tax for the Tax Period at issue plus interest, and treated this \$16,107.39 payment as an overpayment, which subsequently was applied to the assessment in July 2011. While the Department treated the \$16,107.39 payment as an overpayment, this \$16,107.39 overpayment does not generate interest in the Department's system.

Taxpayer asserted that the Department erred in assessing additional tax plus interest on the items, which Taxpayer timely reported and paid the tax due. When Taxpayer timely reported and paid the \$16,107.39 use tax, the audit should not have assessed additional tax. To support its protest, Taxpayer provided additional documentation demonstrating that it timely filed and remitted the tax for the Tax Period at issue.

Upon reviewing Taxpayer's documentation, Taxpayer has provided sufficient documentation demonstrating that it timely filed and remitted the \$16,107.39 tax for the Tax Period at issue. Thus, the Department will remove the items, for which Taxpayer timely paid the use tax, from the audit and recalculate interest in a supplemental

FINDING

Taxpayer's protest is sustained.

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